IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

MFA.No. 1097 of 2000(B)

OPMV.1932/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANTS/PETITIONER IN O.P.(MV).NO.1932/1993:

K.AJITH KUMAR, AGED 32 YEARS,
S/O.RAGHAVA MENON,
KORAPURATHU HOUSE, IRIMBANAM (P.O.)
TRIPUNITHURA.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS/RESPONDENTS NO.1 TO 3 IN O.P.(MV).NO.1932/1993:

1.T.K.SUBRAMANIAN,FATHER'S NAME NOT KNOWN,
THONDIPARAMBIL, THRIVAMKULAM, ERNAKULAM.

2.P.CHANDRA SEKHAR,S/O.NARAYANAN NAIR,
PADIYIL HOUSE, THRIVAMKULAM, ERNAKULAM.

3.THE ORIENTAL INSURANCE CO. LTD.,
M.G.ROAD, COCHIN-16.

BY ADV. SRI.MATHEWS JACOB (SR.) FOR R3
SRI.P.JACOB MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1097 OF 2000 (B)

Dated this the 6th day of June, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant met with a motor accident by which he suffered very serious injuries. It was found by the tribunal that accident occurred due to the negligence of the 2nd respondent driver of the vehicle insured by the 3rd respondent. He claimed a total compensation of Rs.10,00,000/-. Tribunal awarded Rs.2,94,000/- and most of the amounts are regarding reimbursement of medical expenses. Quantum of compensation is challenged in this appeal.

2. The main point raised before us is regarding the quantum of compensation awarded for loss of earning capacity and disablement. It is true that he has suffered very serious injuries. The details of the treatment given are considered by the Tribunal at paragraph 8 of the order which reads as follows:

"8. For the injuries sustained, the petitioner was initially treated in the Medical Trust Hospital and thereafter in the Vathakat Orthopaedic Hospital and S.N.Medical Centre. Ext.A6 is the copy of the wound certificate and Exts.A7 and A8 are the discharge certificates issued from the Medical Trust Hospital. Exts.A9 to A11 and A25 are the Medical certificates from Vathakat Orthopaedic Hospital. Ext.A12 is the medical certificate issued from the S.N.Medical Centre. It is proved by these documents that in the accident the petitioner sustained Type III open fracture right tibia, closed comminuted and segmental fracture shaft of right femur and fracture right clavicle. He was admitted in the Medical Trust Hospital on 18.5.1993. Open reduction and K nailing done for fracture femur and wound debridement and external fixator application done for the fracture tibia. There was IM Nail infection and so skin grafting done for the raw area over the leg and discharged on 26.6.1993. He was re-admitted on 26.7.1993, cast removed, advised knee bending exercise and PTB cast applied. He was discharged on 6.8.1993. He was re-admitted on 18.8.1993, advised non-weight bearing crutch walking, knee bending excercises and discharged on 20.8.1993. He was again admitted on 4.10.1993. PTB cast removed and advised 20% weight bearing and discharged on 7.10.1993. Thereafter he was admitted in the Vathakat Orthopaedic Hospital on 8.6.1994 and discharged on 13.6.1994. He was re-admitted on 17.9.1994 and discharged on 21.10.1994. Again he was admitted on 31.10.1994 and discharged on 4.11.1994. On 23.11.1994 he was admitted again and discharged on 30.11.1994. Again he was admitted on 20.2.1995 and discharged on 25.2.1995. He was again admitted on 2.5.1995 and discharged on 9.5.1995. He was again admitted on 1.7.1995 and discharged on 5.7.1995. He was again admitted on 5.9.1995 and

> discharged on 16.9.1995. On 9.6.1994 he underwent operation for removal of the IM nail from right femur and on 21.9.1994 he underwent operation for Osteotomy for lengthening of right femur. These facts are proved by Exts.A9 to A11. Ext.A12 is the medical certificate issued from the S.N.Medical centre. It shows that the petitioner was admitted in the above said hospital on 27.1.1996, that he underwent treatment for fracture he sustained in the accident and discharged on 16.2.1996."

Ext.A25 is the Medical certificate issued from the Vathakat Orthopaedic Hospital assessing 30% disability and at that time the treatment were not over and thereafter complications arose. Ext.A15 is the another medical certificate which assessed 35% disability. The above certificate reads as follows:

On Examination:	Vital signs were stable. Black eye (Rt). Swelling over (R) clavicle. (R) lower limb: in full external rotation. Abnormal mobility over middle 3rd of leg. Vertical lacerated wound 5 x 7 cms middle 3rd of leg anterior aspect exposing the fractured tibia. No neurovascular deficit.
INVESTIGATIONS:	Comminuted fracture with 4 large segments over middle third of

femoral shaft fracture tibia middle 3rd. fracture (R) clavicle.

TREATMENT GIVEN: Open reduction of K nailing was done for fracture femur and wound debridement and external fixator application was done for the fracture tibia.

A lower tibial steinman pin was passed. Regular dressings were given for the wound over leg.

On 9.6.1993, IM Nail impaction and SSG was done for the raw area over leg.

On 25.6.1993, a long leg cast was applied and external fixator was removed and he was discharged on 26.6.1993.

Certified that I have examined Sri.K.Ajithkumar, 33 years, Koraparath Irumpanam, whose signature is given above, and found that he is an orthopaedically disabled person having post-treamatic sequelae right lower limb and right clavicle, with stiffness of right knee, shortening of right lower limb by $1^1/_2$ inch, inability to squat, wasting of right leg, scarring on right leg, pain on weight bearing with right foot and secondary osteoarthritis right knee, malunion of right clavicle, difficulty in bearing heavy weight with right upper limb, and the permanent partial physical disability is assessed to be 35% (Thirty five percent)."

It is the case of the appellant that thereafter he was examined

by the Medical Board constituted by the District Medical Board by officials consisting of five doctors and the above certificate reads as follows:

> "We, the members of the Special Medical Board today examined Sri.Ajithkumar, 32 years, whose signature is given above and found that he is an Orthopaedically disabled person having ost treamatic sequelar of (R) lower leg (due to comminuted fracture (R) femur and fracture (R) tibia) and (R) shoulder (due to Mal-united fracture clavicle (R). He is unable to squat, his knee flexion is only 40%, ankle movements restricted, unable to climb stairs, construct pain on (R) leg due to secondary osteoartheritis of (R) lower limb joins constaint pain and swelling (R) leg while walking or weight bearing, shortening of (R) leg by $1^{1}/_{2}^{''}$ and lumping on (R) leg and difficulty in bearing weight with (R) upper limb. Considering all these problems his partial permanent physical disability is assessed to be 40% (forty)."

However, the above certificate was not produced and marked by the Tribunal. Considering the treatment records as well as the disability certificates, we are of the opinion that this is a case where at least 30% disability should have been granted even though it is the prayer of the petitioner that compensation shall be granted for 40% disability.

3. It is contended by the petitioner that he was working as a screen printer and apart from that he was an approved agent of the General Insurance company and he produced certificates from the Insurance company. The Income tax Inspector was also examined to show that he was getting Rs.6,000/- per month. Tribunal has taken only Rs.3,000/- as monthly income. In the absence of clear data, we see no ground to enhance the monthly income fixed. At the time of accident, deceased was 25 years old and if second schedule is taken for guidance 18 was the multiplier to be taken. But even if 15 is taken as the multiplier, compensation payable will be Rs.3,000 x 15 x 12 x $^{30}/_{100}$ = 1,62,000/-. Tribunal has fixed compensation for disability and loss of earning power as Rs.81,000/-. Therefore additional amount he is entitled is Rs.81,000/-. It is contended that compensation granted on all other heads are very inadequate. Considering the total amount granted, we are not granting any further amount on other heads. The above additional amount of

Rs.81,000/- should be deposited by the 3rd respondent Insurance company with 7% interest from the date of application till deposit. Since the accident occurred in the year 1993 and considering the age of the appellant, on deposit of the amount appellant is allowed to withdraw the amount. Appeal is allowed partly.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1097 OF 2000 (B)

J U D G M E N T

6th June, 2007